

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

GARY L. SMITH,

Petitioner,

v.

Civil Action No. 2:06cv39

KEVIN J. WENDT, Warden,

Respondent.

ORDER

It will be recalled that on April 25, 2006, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed.

The Petition in this civil action, filed pursuant to 28 U.S.C. §2241, alleges that the Respondent is restricting his communication by mail with his Attorney-in-Fact. The Court has carefully reviewed Magistrate Judge Seibert's Report and Recommendation. Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues of whether the Court has jurisdiction and whether the Petitioner's claims are properly before the Court in an action filed pursuant to 28 U.S.C. §2241 were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be,

and the same hereby is, accepted in whole. Accordingly, it is

ORDERED that the Petitioner's §2241 petition be, and the same hereby is, **DENIED, DISMISSED** without prejudice, and **STRICKEN** from the docket of this Court.

It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: May 23rd, 2007

/s/ Robert E. Maxwell
United States District Judge